

1 JOSEPH P. McMONIGLE SBN # 66811
 2 DOUGLAS J. MELTON SBN # 161353
 3 JOHN B. SULLIVAN SBN #238306
 4 LONG & LEVIT LLP
 5 465 California Street, Suite 500
 San Francisco, CA 94104
 TEL: (415) 397-2222 FAX: (415) 397-6392
jmcmonigle@longlevit.com / dmelton@longlevit.com
jsullivan@longlevit.com

6 Attorneys for Defendants
 7 ATLAS HOSPITALITY GROUP, INC.,
 and JUSTIN B. MYERS

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11
 12 DOUGLAS KEANE,

13 Plaintiff,

14 vs.
 15 ATLAS HOSPITALITY GROUP,
 HEDMARK VIII, LLC and WESTLAND
 16 FINANCIAL III, LLC and JUSTIN B.
 MYERS,

17 Defendants.
 18

CASE No. C07-06074 EMC

**ANSWER OF ATLAS HOSPITALITY
 GROUP, INC. AND JUSTIN B. MYERS**

Action Filed: October 22, 2007
 Action Removed: November 30, 2007
 Judge: Hon. Edward M. Chen

JURY TRIAL DEMANDED

20
 21 Defendants ATLAS HOSPITALITY GROUP, INC., and JUSTIN B. MYERS
 (“Defendants”) submit the following answer to plaintiff’s Verified Complaint for Damages and
 22 Demand for Jury Trial (“Complaint”) filed on October 22, 2007, and removed to this Court on
 23 November 30, 2007:
 24

25
 26 **FIRST CAUSE OF ACTION**
 (Violation of California Civil Code §3344)

27
 28 1. Answering the allegations of paragraph 1 of plaintiff’s Complaint,
 Defendants admit all allegations therein.

1 2. Answering the allegations of paragraph 2 of plaintiff's Complaint,
 2 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 3 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

4 3. Answering the allegations of paragraph 3 of plaintiff's Complaint,
 5 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 6 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

7 4. Answering the allegations of paragraph 4 of plaintiff's Complaint,
 8 Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B.
 9 Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course
 10 and scope of his alleged employment.

11 5. Answering the allegations of paragraph 5 of plaintiff's Complaint,
 12 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 13 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

14 6. Answering the allegations of paragraph 6 of plaintiff's Complaint,
 15 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 16 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

17 7. Answering the allegations of paragraph 7 of plaintiff's Complaint,
 18 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 19 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 20 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 21 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 22 every allegation in the said paragraph.

23 8. Answering the allegations of paragraph 8 of plaintiff's Complaint,
 24 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 25 which is from the Cyrus restaurant website. Except as so admitted, Defendants deny each and
 26 every other allegation in the said paragraph.

27

28

1 9. Answering the allegations of paragraph 9 of plaintiff's Complaint,
 2 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 3 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

4 10. Answering the allegations of paragraph 10 of plaintiff's Complaint,
 5 Defendants deny each and every allegation therein.

6 11. Answering the allegations of paragraph 11 of plaintiff's Complaint,
 7 Defendants deny each and every allegation therein.

8 12. Answering the allegations of paragraph 12 of plaintiff's Complaint,
 9 Defendants deny each and every allegation therein.

10 13. Answering the allegations of paragraph 13 of plaintiff's Complaint,
 11 Defendants deny all allegations therein.

12 14. Answering the allegations of paragraph 14 of plaintiff's Complaint,
 13 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 14 against Defendants, but deny that he is entitled to such damages.

15 15. Answering the allegations of paragraph 15 of plaintiff's Complaint,
 16 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 17 against Defendants, but deny that he is entitled to such damages.

18 16. Answering the allegations of paragraph 16 of plaintiff's Complaint,
 19 Defendants admit that plaintiff requests that all defendants be found liable to him for the greater
 20 of \$750 or the actual damages suffered by him as a result of the allegedly unauthorized use of his
 21 name. Defendants deny that that plaintiff is entitled to such relief.

22 17. Answering the allegations of paragraph 17 of plaintiff's Complaint,
 23 Defendants admit that plaintiff requests that all defendants be found liable to him for any profits
 24 from the alleged unauthorized use of his name. Defendants deny that that plaintiff is entitled to
 25 such relief.

26 18. Answering the allegations of paragraph 18 of plaintiff's Complaint,
 27 Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees
 28 and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

19. Answering the allegations of paragraph 19 of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to any such relief.

**SECOND CAUSE OF ACTION
(Violation of California Civil Code §3344)**

20. Answering the allegations of paragraph 20, Defendants incorporate their responses to paragraphs 1 through 19.

21. Answering the allegations of paragraph 21 of plaintiff's Complaint, Defendants admit all allegations therein.

22. Answering the allegations of paragraph 22 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

23. Answering the allegations of paragraph 23 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

24. Answering the allegations of paragraph 24 of plaintiff's Complaint, Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B. Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course and scope of his alleged employment.

25. Answering the allegations of paragraph 25 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

26. Answering the allegations of paragraph 26 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

1 27. Answering the allegations of paragraph 27 of plaintiff's Complaint,
 2 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 3 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 4 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 5 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 6 every allegation in the said paragraph.

7 28. Answering the allegations of paragraph 28 of plaintiff's Complaint,
 8 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 9 which is from the San Francisco Chronicle. Except as so admitted, Defendants deny each and
 10 every other allegation in the said paragraph.

11 29. Answering the allegations of paragraph 29 of plaintiff's Complaint,
 12 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 13 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

14 30. Answering the allegations of paragraph 30 of plaintiff's Complaint,
 15 Defendants deny each and every allegation therein.

16 31. Answering the allegations of paragraph 31 of plaintiff's Complaint,
 17 Defendants deny each and every allegation therein.

18 32. Answering the allegations of paragraph 32 of plaintiff's Complaint,
 19 Defendants deny each and every allegation therein.

20 33. Answering the allegations of paragraph 33 of plaintiff's Complaint,
 21 Defendants deny all allegations therein.

22 34. Answering the allegations of paragraph 34 of plaintiff's Complaint,
 23 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 24 against Defendants, but deny that he is entitled to such damages.

25 35. Answering the allegations of paragraph 35 of plaintiff's Complaint,
 26 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 27 against Defendants, but deny that he is entitled to such damages.

28

36. Answering the allegations of paragraph 36 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for the greater of \$750 or the actual damages suffered by him as a result of the alleged unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

37. Answering the allegations of paragraph 37 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for any profits from the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

38. Answering the allegations of paragraph 38 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

39. Answering the allegations of paragraph 39 of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to any such relief.

THIRD CAUSE OF ACTION
(Violation of California Civil Code §3344)

40. Answering the allegations of paragraph 20, Defendants incorporate their responses to paragraphs 1 through 39.

41. Answering the allegations of paragraph 41 of plaintiff's Complaint, Defendants admit all allegations therein.

42. Answering the allegations of paragraph 42 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

43. Answering the allegations of paragraph 43 of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

1 44. Answering the allegations of paragraph 44 of plaintiff's Complaint,
 2 Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B.
 3 Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course
 4 and scope of his alleged employment.

5 45. Answering the allegations of paragraph 45 of plaintiff's Complaint,
 6 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 7 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

8 46. Answering the allegations of paragraph 46 of plaintiff's Complaint,
 9 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 10 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

11 47. Answering the allegations of paragraph 47 of plaintiff's Complaint,
 12 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 13 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 14 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 15 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 16 every allegation in the said paragraph.

17 48. Answering the allegations of paragraph 48 of plaintiff's Complaint,
 18 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 19 which is from the San Francisco Chronicle. Except as so admitted, Defendants deny each and
 20 every other allegation in the said paragraph.

21 49. Answering the allegations of paragraph 49 of plaintiff's Complaint,
 22 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 23 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

24 50. Answering the allegations of paragraph 50 of plaintiff's Complaint,
 25 Defendants deny each and every allegation therein.

26 51. Answering the allegations of paragraph 51 of plaintiff's Complaint,
 27 Defendants deny each and every allegation therein

52. Answering the allegations of paragraph 52 of plaintiff's Complaint, Defendants deny each and every allegation therein.

53. Answering the allegations of paragraph 53 of plaintiff's Complaint, Defendants deny all allegations therein.

54. Answering the allegations of paragraph 54 of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed against Defendants, but deny that he is entitled to such damages.

55. Answering the allegations of paragraph 55 of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed against Defendants, but deny that he is entitled to such damages.

56. Answering the allegations of paragraph 56 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for the greater of \$750 or the actual damages suffered by him as a result of the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

57. Answering the allegations of paragraph 57 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for any profits from the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

58. Answering the allegations of paragraph 58 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

59. Answering the allegations of paragraph 59 of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to any such relief.

**FOURTH CAUSE OF ACTION
(Violation of California Civil Code §3344)**

60. Answering the allegations of paragraph 60, Defendants incorporate their responses to paragraphs 1 through 59.

1 61. Answering the allegations of paragraph 61 of plaintiff's Complaint,
 2 Defendants admit all allegations therein.

3 62. Answering the allegations of paragraph 62 of plaintiff's Complaint,
 4 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 5 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

6 63. Answering the allegations of paragraph 63 of plaintiff's Complaint,
 7 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 8 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

9 64. Answering the allegations of paragraph 64 of plaintiff's Complaint,
 10 Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B.
 11 Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course
 12 and scope of his alleged employment.

13 65. Answering the allegations of paragraph 65 of plaintiff's Complaint,
 14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 15 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

16 66. Answering the allegations of paragraph 66 of plaintiff's Complaint,
 17 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 18 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

19 67. Answering the allegations of paragraph 67 of plaintiff's Complaint,
 20 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 21 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 22 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 23 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 24 every allegation in the said paragraph..

25 68. Answering the allegations of paragraph 68 of plaintiff's Complaint,
 26 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 27 which is from the publication *Gourmet America's Top 50 Restaurants*. Except as so admitted,
 28 Defendants deny each and every other allegation in the said paragraph.

1 69. Answering the allegations of paragraph 69 of plaintiff's Complaint,
 2 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 3 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

4 70. Answering the allegations of paragraph 70 of plaintiff's Complaint,
 5 Defendants deny each and every allegation therein.

6 71. Answering the allegations of paragraph 71 of plaintiff's Complaint,
 7 Defendants deny each and every allegation therein

8 72. Answering the allegations of paragraph 72 of plaintiff's Complaint,
 9 Defendants deny each and every allegation therein.

10 73. Answering the allegations of paragraph 73 of plaintiff's Complaint,
 11 Defendants deny all allegations therein.

12 74. Answering the allegations of paragraph 74 of plaintiff's Complaint,
 13 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 14 against Defendants, but deny that he is entitled to such damages.

15 75. Answering the allegations of paragraph 75 of plaintiff's Complaint,
 16 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 17 against Defendants, but deny that he is entitled to such damages.

18 76. Answering the allegations of paragraph 76 of plaintiff's Complaint,
 19 Defendants admit that plaintiff requests that all defendants be found liable to him for the greater
 20 of \$750 or the actual damages suffered by him as a result the allegedly unauthorized use of his
 21 name. Defendants deny that that plaintiff is entitled to such relief.

22 77. Answering the allegations of paragraph 77 of plaintiff's Complaint,
 23 Defendants admit that plaintiff requests that all defendants be found liable to him for any profits
 24 from the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to
 25 such relief.

26 78. Answering the allegations of paragraph 78 of plaintiff's Complaint,
 27 Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees
 28 and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

1 79. Answering the allegations of paragraph 79 of plaintiff's Complaint,
2 Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants
3 deny that that plaintiff is entitled to any such relief.

FIFTH CAUSE OF ACTION
(Violation of California Civil Code §3344)

13 83. Answering the allegations of paragraph 83 of plaintiff's Complaint,
14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
15 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

20 85. Answering the allegations of paragraph 85 of plaintiff's Complaint,
21 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
22 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

23 86. Answering the allegations of paragraph 86 of plaintiff's Complaint,
24 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
25 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

1 87. Answering the allegations of paragraph 87 of plaintiff's Complaint,
 2 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 3 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 4 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 5 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 6 every allegation in the said paragraph.

7 88. Answering the allegations of paragraph 88 of plaintiff's Complaint,
 8 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 9 which is from the publication *Food and Wine*. Except as so admitted, Defendants deny each and
 10 every other allegation in the said paragraph.

11 89. Answering the allegations of paragraph 89 of plaintiff's Complaint,
 12 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 13 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

14 90. Answering the allegations of paragraph 90 of plaintiff's Complaint,
 15 Defendants deny each and every allegation therein.

16 91. Answering the allegations of paragraph 91 of plaintiff's Complaint,
 17 Defendants deny each and every allegation therein.

18 92. Answering the allegations of paragraph 92 of plaintiff's Complaint,
 19 Defendants deny each and every allegation therein.

20 93. Answering the allegations of paragraph 93 of plaintiff's Complaint,
 21 Defendants deny each and every allegation therein.

22 94. Answering the allegations of paragraph 94 of plaintiff's Complaint,
 23 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 24 against Defendants, but deny that he is entitled to such damages.

25 95. Answering the allegations of paragraph 95 of plaintiff's Complaint,
 26 Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed
 27 against Defendants, but deny that he is entitled to such damages.

28

1 96. Answering the allegations of paragraph 96 of plaintiff's Complaint,
2 Defendants admit that plaintiff requests that all defendants be found liable to him for the greater
3 of \$750 or the actual damages suffered by him as a result of the allegedly unauthorized use of his
4 name. Defendants deny that that plaintiff is entitled to such relief.

5 97. Answering the allegations of paragraph 97 of plaintiff's Complaint,
6 Defendants admit that plaintiff requests that all defendants be found liable to him for any profits
7 from the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to
8 such relief.

SIXTH CAUSE OF ACTION
(Violation of California Civil Code §§3344)

24 103. Answering the allegations of paragraph 103 of plaintiff's Complaint,
25 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
26 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

1 104. Answering the allegations of paragraph 104 of plaintiff's Complaint,
 2 Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B.
 3 Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course
 4 and scope of his alleged employment.

5 105. Answering the allegations of paragraph 105 of plaintiff's Complaint,
 6 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 7 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

8 106. Answering the allegations of paragraph 106 of plaintiff's Complaint,
 9 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 10 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

11 107. Answering the allegations of paragraph 107 of plaintiff's Complaint,
 12 Defendants admit that they participated in the preparation a Confidential Offering Memorandum
 13 for the Les Mars Hotel, which Confidential Memorandum was subsequently provided to eight (8)
 14 entities each of which was required to sign, and did sign, a confidentiality agreement prior to
 15 receiving the Confidential Memorandum. Except as so admitted, Defendants deny each and
 16 every allegation in the said paragraph.

17 108. Answering the allegations of paragraph 108 of plaintiff's Complaint,
 18 Defendants admit that the Confidential Offering Memorandum includes the referenced quote,
 19 which is from the publication *Esquire - Chef of the Year*. Except as so admitted, Defendants deny
 20 each and every other allegation in the said paragraph.

21 109. Answering the allegations of paragraph 109 of plaintiff's Complaint,
 22 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 23 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

24 110. Answering the allegations of paragraph 110 of plaintiff's Complaint,
 25 Defendants deny each and every allegation therein.

26 111. Answering the allegations of paragraph 111 of plaintiff's Complaint,
 27 Defendants deny each and every allegation therein.

28

112. Answering the allegations of paragraph 112 of plaintiff's Complaint, Defendants deny each and every allegation therein.

113. Answering the allegations of paragraph 113 of plaintiff's Complaint, Defendants deny each and every allegations therein.

114. Answering the allegations of paragraph 114 of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed against Defendants, but deny that he is entitled to such damages.

115. Answering the allegations of paragraph 115 of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed against Defendants, but deny that he is entitled to such damages.

116. Answering the allegations of paragraph 116 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for the greater of \$750 or the actual damages suffered by him as a result of the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

117. Answering the allegations of paragraph 117 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for any profits from the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

118. Answering the allegations of paragraph 118 of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

119. Answering the allegations of paragraph 119 of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to any such relief.

**SEVENTH CAUSE OF ACTION
(Violation of California Civil Code §3344)**

120. Answering the allegations of paragraph 120, Defendants incorporate their responses to paragraphs 1 through 119.

1 121. Answering the allegations of paragraph 121 of plaintiff's Complaint,
 2 Defendants admit all allegations therein.

3 122. Answering the allegations of paragraph 122 of plaintiff's Complaint,
 4 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 5 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

6 123. Answering the allegations of paragraph 123 of plaintiff's Complaint,
 7 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 8 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

9 124. Answering the allegations of paragraph 124 of plaintiff's Complaint,
 10 Defendants admit that Justin B. Myers was and is a California Resident but deny that Justin B.
 11 Myers was or is an employee of Atlas Hospitality Group or that his actions were within the course
 12 and scope of his alleged employment.

13 125. Answering the allegations of paragraph 125 of plaintiff's Complaint,
 14 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
 15 allegations contained in said paragraph, and on that basis deny each and every allegation therein.

16 126. Answering the allegations of paragraph 126 (which is misnumbered as
 17 paragraph 120) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 18 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 19 that basis deny each and every allegation therein.

20 127. Answering the allegations of paragraph 127 (which is misnumbered as
 21 paragraph 121) of plaintiff's Complaint, Defendants admit that they participated in the
 22 preparation a Confidential Offering Memorandum for the Les Mars Hotel, which Confidential
 23 Memorandum was subsequently provided to eight (8) entities each of which was required to sign,
 24 and did sign, a confidentiality agreement prior to receiving the Confidential Memorandum.
 25 Except as so admitted, Defendants deny each and every allegation in the said paragraph.

26

27

28

1 128. Answering the allegations of paragraph 128 (which is misnumbered as
 2 paragraph 122) of plaintiff's Complaint, Defendants admit that the Confidential Offering
 3 Memorandum includes the referenced quote, which is from the publication *Esquire - Chef of the*
 4 *Year*. Except as so admitted, Defendants denies each and every other allegation in the said
 5 paragraph.

6 129. Answering the allegations of paragraph 129 (which is misnumbered as
 7 paragraph 123) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 8 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 9 that basis deny each and every allegation therein.

10 130. Answering the allegations of paragraph 130 (which is misnumbered as
 11 paragraph 124) of plaintiff's Complaint, Defendants deny each and every allegation therein.

12 131. Answering the allegations of paragraph 131 (which is misnumbered as
 13 paragraph 125) of plaintiff's Complaint, Defendants deny each and every allegation therein.

14 132. Answering the allegations of paragraph 132 (which is misnumbered as
 15 paragraph 126) of plaintiff's Complaint, Defendants deny each and every allegation therein.

16 133. Answering the allegations of paragraph 133 (which is misnumbered as
 17 paragraph 127) of plaintiff's Complaint, Defendants deny each and every allegation therein.

18 134. Answering the allegations of paragraph 134 (which is misnumbered as
 19 paragraph 128) of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary
 20 and/or punitive damages be assessed against Defendants, but deny that he is entitled to such
 21 damages.

22 135. Answering the allegations of paragraph 135 (which is misnumbered as
 23 paragraph 129) of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary
 24 and/or punitive damages be assessed against Defendants, but deny that he is entitled to such
 25 damages.

26

27

28

136. Answering the allegations of paragraph 136 (which is misnumbered as paragraph 130) of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for the greater of \$750 or the actual damages suffered by him as a result of the allegedly unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

137. Answering the allegations of paragraph 137 (which is misnumbered as paragraph 131) of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for any profits from the alleged unauthorized use of his name. Defendants deny that that plaintiff is entitled to such relief.

138. Answering the allegations of paragraph 138(which is misnumbered as paragraph 132) of plaintiff's Complaint, Defendants admit that plaintiff requests that all defendants be found liable to him for attorney fees and costs. Defendants deny that that plaintiff is entitled to attorney fees and costs.

139. Answering the allegations of paragraph 139 (which is misnumbered as paragraph 133) of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to any such relief.

EIGHTH CAUSE OF ACTION
(Violation of California Civil Code §3344)

140. Answering the allegations of paragraph 140 (which is misnumbered as paragraph 134), Defendants incorporate their responses to paragraphs 1 through 133.

141. Answering the allegations of paragraph 140 (which is misnumbered as paragraph 135) of plaintiff's Complaint, Defendants admit all allegations therein.

142. Answering the allegations of paragraph 142 (which is misnumbered as paragraph 136) of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

1 143. Answering the allegations of paragraph 143 (which is misnumbered as
 2 paragraph 137) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 3 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 4 that basis deny each and every allegation therein.

5 144. Answering the allegations of paragraph 144 (which is misnumbered as
 6 paragraph 138) of plaintiff's Complaint, Defendants admit that Justin B. Myers was and is a
 7 California Resident but deny that Justin B. Myers was or is an employee of Atlas Hospitality
 8 Group or that his actions were within the course and scope of his alleged employment.

9 145. Answering the allegations of paragraph 145 (which is misnumbered as
 10 paragraph 139) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 11 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 12 that basis deny each and every allegation therein.

13 146. Answering the allegations of paragraph 146 (which is misnumbered as
 14 paragraph 140) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 15 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 16 that basis deny each and every allegation therein.

17 147. Answering the allegations of paragraph 147 (which is misnumbered as
 18 paragraph 141) of plaintiff's Complaint, Defendants admit that they participated in the
 19 preparation a Confidential Offering Memorandum for the Les Mars Hotel, which Confidential
 20 Memorandum was subsequently provided to eight (8) entities each of which was required to sign,
 21 and did sign, a confidentiality agreement prior to receiving the Confidential Memorandum.
 22 Except as so admitted, Defendants deny each and every allegation in the said paragraph.

23 148. Answering the allegations of paragraph 148 (which is misnumbered as
 24 paragraph 142) of plaintiff's Complaint, Defendants admit that the Confidential offering
 25 memorandum includes a photo of Plaintiff, which is from the Cyrus restaurant website. Except as
 26 so admitted, Defendants deny each and every other allegation in said paragraph.

27

28

1 149. Answering the allegations of paragraph 149 (which is misnumbered as
 2 paragraph 143) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 3 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 4 that basis deny each and every allegation therein.

5 150. Answering the allegations of paragraph 150 (which is misnumbered as
 6 paragraph 144) of plaintiff's Complaint, Defendants deny each and every allegation therein.

7 151. Answering the allegations of paragraph 151 (which is misnumbered as
 8 paragraph 145) of plaintiff's Complaint, Defendants deny each and every allegation therein.

9 152. Answering the allegations of paragraph 152 (which is misnumbered as
 10 paragraph 146) of plaintiff's Complaint, Defendants deny each and every allegation therein.

11 153. Answering the allegations of paragraph 153 (which is misnumbered as
 12 paragraph 147) of plaintiff's Complaint, Defendants deny each and every allegation therein.

13 154. Answering the allegations of paragraph 154 (which is misnumbered as
 14 paragraph 148) of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary
 15 and/or punitive damages be assessed against Defendants, but deny that he is entitled to such
 16 damages.

17 155. Answering the allegations of paragraph 155 (which is misnumbered as
 18 paragraph 149) of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary
 19 and/or punitive damages be assessed against Defendants, but deny that he is entitled to such
 20 damages.

21 156. Answering the allegations of paragraph 156 (which is misnumbered as
 22 paragraph 150) of plaintiff's Complaint, Defendants admit that plaintiff requests that all
 23 defendants be found liable to him for the greater of \$750 or the actual damages suffered by him as
 24 a result of the alleged unauthorized use of his name. Defendants deny that that plaintiff is entitled
 25 to such relief.

26

27

28

1 157. Answering the allegations of paragraph 157 (which is misnumbered as
2 paragraph 151) of plaintiff's Complaint, Defendants admit that plaintiff requests that all
3 defendants be found liable to him for any profits from the allegedly unauthorized use of his name.
4 Defendants deny that that plaintiff is entitled to such relief.

5 158. Answering the allegations of paragraph 158 (which is misnumbered as
6 paragraph 152) of plaintiff's Complaint, Defendants admit that plaintiff requests that all
7 defendants be found liable to him for attorney fees and costs. Defendants deny that that plaintiff
8 is entitled to attorney fees and costs.

NINTH CAUSE OF ACTION
(Appropriation of Right of Publicity for Commercial Purposes)

14 160. Answering the allegations of paragraph 160 (which is misnumbered as
15 paragraph 154), Defendants incorporate their responses to paragraphs 1 through 159.

16 161. Answering the allegations of paragraph 161 (which is misnumbered as
17 paragraph 155) of plaintiff's Complaint, Defendants admit all allegations therein.

18 162. Answering the allegations of paragraph 162 (which is misnumbered as
19 paragraph 156) of plaintiff's Complaint, Defendants are without sufficient knowledge or
20 information to form a belief as to the truth of the allegations contained in said paragraph, and on
21 that basis deny each and every allegation therein.

163. Answering the allegations of paragraph 163 (which is misnumbered as
paragraph 157) of plaintiff's Complaint, Defendants are without sufficient knowledge or
information to form a belief as to the truth of the allegations contained in said paragraph, and on
that basis deny each and every allegation therein.

1 164. Answering the allegations of paragraph 164 (which is misnumbered as
 2 paragraph 158) of plaintiff's Complaint, Defendants admit that Justin B. Myers was and is a
 3 California Resident but deny that Justin B. Myers was or is an employee of Atlas Hospitality
 4 Group or that his actions were within the course and scope of his alleged employment.

5 165. Answering the allegations of paragraph 165 (which is misnumbered as
 6 paragraph 159) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 7 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 8 that basis deny each and every allegation therein.

9 166. Answering the allegations of paragraph 166 (which is misnumbered as
 10 paragraph 160) of plaintiff's Complaint, Defendants are without sufficient knowledge or
 11 information to form a belief as to the truth of the allegations contained in said paragraph, and on
 12 that basis deny each and every allegation therein.

13 167. Answering the allegations of paragraph 167 (which is misnumbered as
 14 paragraph 161) of plaintiff's Complaint, Defendants admit that they participated in the
 15 preparation a Confidential Offering Memorandum for the Les Mars Hotel, which Confidential
 16 Memorandum was subsequently provided to eight (8) entities each of which was required to sign,
 17 and did sign, a confidentiality agreement prior to receiving the Confidential Memorandum.
 18 Except as so admitted, Defendants deny each and every allegation in the said paragraph.

19 168. Answering the allegations of paragraph 168 (which is also misnumbered as
 20 paragraph 161) of plaintiff's Complaint, Defendants admit that the confidential offering
 21 memorandum includes the referenced quote, which is from the Cyrus restaurant website. Except
 22 as so admitted, Defendants deny each and every other allegation in the said paragraph.

23 169. Answering the allegations of paragraph 169 (which is misnumbered as
 24 paragraph 162) of plaintiff's Complaint, Defendants admit that the confidential offering
 25 memorandum includes the referenced quote, which is from the San Francisco Chronicle. Except
 26 as so admitted, Defendants deny each and every other allegation in the said paragraph.

27

28

1 170. Answering the allegations of paragraph 170 (which is misnumbered as
 2 paragraph 163) of plaintiff's Complaint, Defendants admit that the confidential offering
 3 memorandum includes the referenced quote, which is from the San Francisco Chronicle. Except
 4 as so admitted, Defendants deny each and every other allegation in the said paragraph.

5 171. Answering the allegations of paragraph 171 (which is misnumbered as
 6 paragraph 164) of plaintiff's Complaint, Defendants admit that the confidential offering
 7 memorandum includes the referenced quote, which is from the publication *Gourmet - America's*
 8 *Top 50 Restaurants*. Except as so admitted, Defendants deny each and every other allegation in
 9 the said paragraph.

10 172. Answering the allegations of paragraph 172 (which is misnumbered as
 11 paragraph 165) of plaintiff's Complaint, Defendants admit that the confidential offering
 12 memorandum includes the referenced quote, which is from the publication *Food and Wine*.
 13 Except as so admitted, Defendants deny each and every other allegation in the said paragraph.

14 173. Answering the allegations of paragraph 173 (which is misnumbered as
 15 paragraph 166) of plaintiff's Complaint, Defendants admit that the confidential offering
 16 memorandum includes the referenced quote, which is from the publication *Esquire - Chef of the*
 17 *Year*. Except as so admitted, Defendants deny each and every other allegation in the said
 18 paragraph.

19 174. Answering the allegations of paragraph 174 (which is misnumbered as
 20 paragraph 167) of plaintiff's Complaint, Defendants admit that the confidential offering
 21 memorandum includes the referenced quote, which is from the publication *Esquire - Chef of the*
 22 *Year*. Except as so admitted, Defendants deny each and every other allegation in the said
 23 paragraph.

24 175. Answering the allegations of paragraph 175 (which is misnumbered as
 25 paragraph 168) of plaintiff's Complaint, Defendants admit that the Confidential offering
 26 memorandum includes a photo of Plaintiff, which is from the Cyrus restaurant website. Except as
 27 so admitted, Defendants deny each and every other allegation in said paragraph.

28

176. Answering the allegations of paragraph 176 (which is misnumbered as paragraph 169) of plaintiff's Complaint, Defendants deny each and every allegation therein.

177. Answering the allegations of paragraph 177 (which is misnumbered as paragraph 170) of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

178. Answering the allegations of paragraph 178 (which is misnumbered as paragraph 171) of plaintiff's Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation therein.

179. Answering the allegations of paragraph 179 (which is misnumbered as paragraph 172) of plaintiff's Complaint, Defendants deny each and every allegation therein.

180. Answering the allegations of paragraph 180 (which is misnumbered as paragraph 173) of plaintiff's Complaint, Defendants deny each and every allegation therein.

181. Answering the allegations of paragraph 180 (which is misnumbered as paragraph 174) of plaintiff's Complaint, Defendants deny each and every allegation therein.

182. Answering the allegations of paragraph 182 (which is misnumbered as 175) of plaintiff's Complaint, Defendants deny each and every allegation therein.

183. Answering the allegations of paragraph 183 (which is misnumbered as paragraph 176) of plaintiff's Complaint, Defendants admit that plaintiff requests that exemplary and/or punitive damages be assessed against Defendants, but deny that he is entitled to such damages.

184. Answering the allegations of paragraph 184 (which is misnumbered as paragraph 177) of plaintiff's Complaint, Defendants admit that plaintiff requests relief set forth elsewhere in his Complaint. Defendants deny that that plaintiff is entitled to such relief.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to each cause of action the complaint, Defendants allege:

FIRST AFFIRMATIVE DEFENSE (Unclean Hands)

Plaintiff's Complaint, and each purported cause of action alleged against Defendants, are barred by virtue of plaintiff's conduct under the equitable doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE
(Waiver)

Plaintiff's Complaint, and each purported cause of action against Defendants, and/or some or all of the damages sought therein, are barred because plaintiff has expressly or impliedly waived his right to such recovery and/or such alleged damages.

THIRD AFFIRMATIVE DEFENSE (Consent)

Plaintiff's Complaint, and each purported cause of action against Defendants, and the damages sought therein, are barred to the extent plaintiff expressly or implicitly consented to the alleged conduct of Defendants and is therefore precluded from recovering any damages therefore.

FOURTH AFFIRMATIVE DEFENSE
(Intentional or Negligent Conduct of Third Parties)

Defendants allege that other third party individuals or entities were negligent and/or committed intentional acts in and about the matters alleged in the Complaint, and that these negligent and/or intentional acts proximately caused and/or contributed to the matters alleged in the Complaint. Accordingly, any damages to which plaintiff might be entitled to should be apportioned by the amount of fault attributable to such third parties.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

By reason of plaintiff's acts and omissions, plaintiff is estopped from recovering damages, if any.

**SIXTH AFFIRMATIVE DEFENSE
(Preemption)**

Plaintiff's Complaint, and each purported cause of action against Defendants, are preempted by the provisions of the Copyright Act, 17 U.S.C. §101 *et seq.*

PRAYER

WHEREFORE, Defendants request that the court enter judgment in this action as follows:

1. That plaintiff take nothing by his Complaint;
2. That judgment be rendered in favor of Defendants;
3. That Defendants be awarded costs of suit and attorney's fees incurred herein; and
4. For such other and further relief as the Court deems just and proper.

5

6

7

8

Dated: December 5, 2007

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

LONG & LEVIT LLP

By

DOUGLAS J. MELTON
JOHN B. SULLIVAN
Attorneys for Defendants
ATLAS HOSPITALITY GROUP, INC.,
and JUSTIN B. MYERS

DOCSVZ8000-800\542542.V1